

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Site Update Solutions LLC, §
Plaintiff §

v. §

Accor North America, Inc.; §

Adobe Systems, Incorporated; §

Amazon.com Inc.; §

American Broadcasting Companies, Inc. §

CBS Corp.; §

CDW; §

Choice Hotels International, Inc.; §

Deli Management, Inc.; §

Daily News L.P.; §

Electronic Arts, Inc.; §

Enterprise Rent-A-Car Company; §

Facebook, Inc.; §

Gannett Satellite Information Network, Inc.; §

HSN, Inc.; §

Intuit, Inc.; §

Linkedin Corporation; §

Monster Worldwide, Inc.; §

Myspace, Inc.; §

MSNBC Interactive News LLC; §

NBC Universal, Inc.; §

Newegg, Inc.; §

Nissan North America, Inc.; §

Office Max, Inc.; §

Overstock.com; §

Red Hat, Inc.; §

Salesforce.com, Inc.; §

Sears, Roebuck and Co.; §

Staples, Inc.; §

Starwood Hotels & Resorts Worldwide, Inc.; §

Target Corporation; §

Thomson Reuters Holdings, Inc.; §

Ticketmaster Entertainment, Inc.; §

Time Warner, Inc. §

Turner Broadcasting System, Inc.; §

Wal-Mart Stores, Inc.; §

and §

Wyndham Worldwide, Inc., §

Defendants

Case No.2:10-cv-151

JURY TRIAL DEMANDED

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE ITS THIRD AMENDED COMPLAINT AND TO EXTEND DEFENDANTS'
DEADLINE TO ANSWER OR OTHERWISE RESPOND**

Pursuant to Federal Rule of Civil Procedure 15 and Local Rule CV-7(j), Plaintiff Site Update Solutions respectfully submits this Motion for Leave to File Its Third Amended Complaint and to Extend Defendants' Deadline to Answer or Otherwise Respond, and would respectfully show as follows:

I. THE PURPOSE FOR AMENDING THE COMPLAINT

Plaintiff's Complaint named as defendants those companies it believed to be controlling certain websites. Very recently, and subsequent to the filing of its Second Amended Complaint, Plaintiff learned that other entities control certain of the websites at issue. On information and belief Time Inc. is the entity responsible for www.time.com and www.sportsillustrated.com, CBS Interactive Inc. is the entity responsible for www.cbs.com, CNN Interactive Group, Inc. is the entity responsible for www.cnn.com, Home Box Office, Inc. is the entity responsible for www.hbo.com, and Ticketmaster L.L.C. is the entity responsible for www.ticketmaster.com. Plaintiff seeks leave to substitute Time, Inc. for Time Warner, Inc., CBS Interactive Group, Inc. for CBS Corp, and Ticketmaster, L.L.C. for Ticketmaster Entertainment, Inc. Plaintiff seeks to add CNN Interactive Group, Inc. and Home Box Office, Inc. as on information and belief they are responsible for www.cnn.com and www.hbo.com, respectively, websites which Plaintiff has previously alleged infringe the patent in suit.

Plaintiff's Third Amended Complaint does not substantively change the nature of the allegations as to the other named defendants. A copy of Plaintiff's proposed Third Amended Complaint is attached hereto as Exhibit A. For the convenience of the Court and the parties,

Plaintiff has agreed to extend the deadline for the defendants to answer or otherwise respond to the Third Amended Complaint to September 7, 2010.

Based on the information learned after the filing of its Second Amended Complaint, Plaintiff respectfully requests that the Court grant this Motion for Leave to File Its Third Amended Complaint and to Extend Defendants' Deadlines to Answer or Otherwise Respond and allow Plaintiff leave to file its Third Amended Complaint and afford the Defendants the opportunity to answer or otherwise respond on or before September 7, 2010.

II. PROCEDURAL POSTURE OF THE CASE

Plaintiff filed its Complaint on May 11, 2010. (Doc. No. 1).

Plaintiff filed its First Amended Complaint on June 25, 2010 (Doc. No. 107).

Plaintiff files its Second Amended Complaint on July 30, 2010 (Doc. No. 182).

As of the time of filing the Second Amended Complaint, five defendants had answered. Overstock.com answered Plaintiff's Original Complaint on June 7, 2010 (Doc. No. 94), Choice Hotel International, Inc. answered Plaintiff's First Amended Complaint on July 14, 2010 (Doc No. 153), Walmart Stores, Inc. answered Plaintiff's First Amended Complaint on July 15, 2010 (Doc. No. 163), Facebook.com answered Plaintiff's First Amended Complaint on July 30, 2010 (Doc No. 170) and Enterprise Rent-A-Car company answered Plaintiff's First Amended Complaint on July 30, 2010 (Doc. No. 175).

As of this filing, two additional defendants have answered. Nissan North America, Inc. answered Plaintiff's Second Amended Complaint on August 16, 2010 (Doc. No. 200). Choice Hotels International Inc. answered Plaintiff's Second Amended Complaint on August 18, 2010 (Doc. No. 202).

Following a review of the Court's docket, Plaintiff believes that counsel for the

remaining defendants have entered their appearances, as well as motions for extension of time to answer or otherwise respond to Plaintiff's Complaint.

As of this date, a scheduling conference has not been set, a Rule 26(f) conference has not been held, and no discovery has been taken or exchanged between the parties.

III. ARGUMENT AND AUTHORITIES

As Plaintiff noted in its Motion for Leave to Amend its Second Complaint, Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend pleadings "shall be given freely when justice so requires." Prior to becoming Chief Judge of the Eastern District of Texas, the Honorable Thad Heartfield recognized the Supreme Court's admonishment to freely grant leave to amend:

. . . this mandate is to be heeded . . . In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc. – *the leave sought should, as the rules require "be freely given."*

Texas Instruments, Inc. v. Hyundai Elec. Indus., 191 F.R.D. 119, 122 (E.D. Tex. 1999) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

None of the foregoing factors are present in the instant case. Once again, there is no undue delay, bad faith or dilatory motive on the part of Plaintiff for seeking the relief requested in this motion for leave to amend its complaint. Moreover, there is no undue prejudice to the defendants. Plaintiff has diligently sought to amend its Complaint promptly when provided with updated information regarding ownership of the various websites accused of infringement, and has agreed to numerous extensions at the request of various Defendants in order to facilitate their inquiries regarding Plaintiff's infringement allegations.

III. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter an order granting it leave of Court to file the attached Third Amended Complaint.

DATED: August 18, 2010

Respectfully submitted,

/s/ Edward W. Goldstein
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on August 18, 2010. Any other counsel of record will be served by first class U.S. mail.

/s/ Edward W. Goldstein
Edward W. Goldstein

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with counsel for Defendants and that the following Defendants agree with the relief requested herein:

Accor North America, Inc.
Adobe Systems, Incorporated
Amazon.com Inc.
American Broadcasting Companies, Inc.
CBS Corp.
Choice Hotels International, Inc.
Deli Management, Inc.
Daily News L.P.
Electronic Arts, Inc.
Facebook, Inc.
Gannett Satellite Information Network, Inc.
Intuit, Inc.
Linkedin Corporation
Monster Worldwide, Inc.
Myspace, Inc.
MSNBC Interactive News LLC
NBC Universal, Inc.
Newegg, Inc.
Nissan North America, Inc.
Overstock.com
Salesforce.com, Inc.
Staples, Inc.
Starwood Hotels & Resorts Worldwide, Inc.
Target Corporation
Thomson Reuters Holdings, Inc.
Ticketmaster Entertainment, Inc.
Time Warner, Inc.
Turner Broadcasting System, Inc.
Wal-Mart Stores, Inc.
Wyndham Worldwide, Inc.

As of the time of filing, the remaining Defendants have not indicated their consent, nor their opposition.

/s/ Edward W. Goldstein _____
Edward W. Goldstein